

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 1726 of 2007()

CRRP.163/2005 of SESSIONS COURT, PALAKKAD
MC.71/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

PETITIONER:

VENUGOPAL, S/O.KRISHNAN NAIR,
KRISHNA VIHAR, MANCHIKUNNU, KONGAD,
PALAKKAD TALUK, PRESENTLY RESIDING KAVUNGAL
HOUSE, VALLIKKAPTTA P.O., MANKADA, PALLIPURAM.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:

1. PRASANNA, W/O.VENUGOPAL,
MANCHIRI KUNNU, KRISHNA VIHAR, KONGAD,
PALAKKAD.
2. PRAMOD, S/O.DO. RESIDING AT DO. DO.
3. DIVYA, D/O.DO., MINOR AGED 16,
IN DO. DO. REPRESENTED BY GUARDIAN RESPONDENT
NO.1
4. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1726 OF 2007

Dated this the 6th day of June, 2007

ORDER

The petitioner has suffered an order directing him to pay maintenance under Sec.125 of the Cr.P.C. at the rate of Rs.500/-, Rs.1,000/- and Rs.1,000/- respectively to the claimants – his wife and two out of three children, the eldest girl having already attained the age of majority.

2. Marriage is admitted. Paternity is admitted. Separate residence is not disputed. Liability of the petitioner to maintain the children is not disputed. Quantum of maintenance awarded to the children is also not disputed before me.

3. Thus, in short, the dispute is only regarding the direction to pay maintenance at the rate of Rs.500/- per mensem to the 1st claimant – wife. Admittedly, the 1st claimant – wife, along with the children is residing at her native place,

CRL.M.C.NO. 1726 OF 2007 -: 2 :-

whereas the petitioner is residing at Chennai where he admittedly running a hotel business. Of course, he has a contention that he has given up the hotel business and is not having any employment now. When the acrimony between the spouses started, after the wife sent a notice seeking maintenance, he had sent a notice to her calling upon her to come and reside with him. He made further allegation of unchaste behaviour against her and contended that he is hence not liable to maintain her. She, in turn, alleged that he is living with another woman and that is the reason why he was refusing and neglecting to maintain his wife – claimant.

4. Parties went to trial on these pleadings. On the side of the claimants, the 1st claimant examined herself as P.W.1. Exts.P1 to P3 were marked. The petitioner examined himself as C.P.W.1. No documents were marked.

5. Called upon to choose between the statement on oath of the claimant as against that of the petitioner, the learned Magistrate concluded that the offer to maintain was not fair or honest. The learned Magistrate further held that though the relationship with another woman at Chennai was not proved satisfactorily, the claimant is entitled for separate maintenance. It was further held that though the lady had some meager

CRL.M.C.NO. 1726 OF 2007 - 3 :-

income from her employment as assistant to a document writer, the relative income justified the direction to pay an amount of Rs.500/- per mensem to the 1st claimant. It is, accordingly, that the learned Magistrate proceeded to pass the impugned order.

6. The petitioner challenged the order before the learned Sessions Judge. The learned Sessions Judge considered the matter and found that the order passed by the learned Magistrate does not warrant revisional interference.

7. A second revision is proscribed under Sec.397(2) of the Cr.P.C. The petitioner has conveniently labelled his challenge as one under Sec.482 of the Cr.P.C. and has found entry through the door of Sec.482 of the Cr.P.C. before this Court.

8. The nature, quality and contours of the jurisdiction under Sec.482 of the Cr.P.C. is delineated by now. In these circumstances, unless there is failure of justice, this Court will refuse to invoke the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C.

9. All guns are trained by the petitioner at the inability of the claimant to prove that he has an illegitimate relationship with a woman at Chennai. Both courts have found that there is no satisfactory evidence to prove this fact. But, to me, it appears that the proof of that fact is not quite crucial or relevant

in the nature and circumstances of this case. Admittedly, the petitioner was employed at Chennai and his wife and children were residing at her native place in Kerala. Admittedly, the 1st claimant – wife, was working as an assistant to a document writer at her native place. In these circumstances, the alleged offer made by him after acrimony arose that she should come and stay with him at Chennai, according to me, was rightly reckoned by the courts below as not a bona fide offer at all. That offer was not worth any serious consideration at all. The offer comes along with an unsubstantiated allegation of unchaste behaviour. Obviously and transparently it was an apology of an offer calculated to shield him from the claim under Sec.125 of the Cr.P.C. The courts below were eminently justified in taking the view that the said offer cannot be reckoned as a bona fide offer in the eye of law.

10. The quantum awarded to the wife is only Rs.500/- per mensem. The evidence available about the relative means of the claimant – wife and the petitioner – husband amply support and justify the award of an amount of Rs.500/- per mensem to the claimant – wife. The courts below, according to me, were totally

CRL.M.C.NO. 1726 OF 2007 -: 5 :-

justified in not accepting the case of the petitioner that consequent to a surgery performed for appendicitis, he has become disabled and has given up his hotel business which he was running for a long period of time. In any view of the matter, I am satisfied that there is no justification to warrant the invocation of the jurisdiction under Sec.482 of the Cr.P.C.

11. This Crl.M.C. is, in these circumstances, dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge